

2003 DRAFTING REQUEST

Bill

Received: **01/07/2004**

Received By: **phurley**

Wanted: **Soon**

Identical to LRB:

For: **Steven Foti (608) 266 8551**

By/Representing: **Joel**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - railroads**

Extra Copies: **PJH, MDK**

Submit via email: **YES**

Requester's email: **Rep.Foti@legis.state.wi.us**

Carbon copy (CC:) to: **Joel.Kleefisch@legis.state.wi.us**
Adam.Raschka@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Commissioner of railroads to be under the jurisdiction of the Department of Transportation

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 01/07/2004			_____			S&L
/P1	agary 01/21/2004	kfollett 01/22/2004	pgreensl 01/23/2004	_____	sbasford 01/23/2004		S&L
		kfollett		_____			

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/1	agary 02/02/2004	kfollett 02/03/2004 kfollett 02/04/2004	pgreensl 02/04/2004	_____	lnorthro 02/04/2004	lemery 02/04/2004	

FE Sent For:

<END>

At
intro

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		02/04/2004		_____			

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01/23/2004 02:38:27 PM

Page 2

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/P1	agary 01/21/2004	lrb_editor 1/23	1/23	1/23			
FE Sent For:							

<END>

Gary, Aaron

3983

From: Hurley, Peggy
Sent: Wednesday, January 07, 2004 12:28 PM
To: Gary, Aaron
Subject: commissioner of railroads drafting request

Hi Aaron,

I received a request from Foti (aide = Joel) to "make the Commissioner of Railroads be under the jurisdiction of the Department of Transportation. We want DOT to be able to override decisions made by the Commissioner." I am not sure if they want to actually eliminate the office of Commissioner, or exactly what they want. I know you've drafted a couple of bills to eliminate the office; do you want to take a crack at this one? I've entered the request as 03-3983, so if you want me to just keep it, I will.

Peggy J. Hurley
Legislative Reference Bureau
One East Main Street
Madison, Wisconsin 53701-2037
608 266 8906

~~He~~ ~~W/ Kristina~~ ~~6-3097~~

3520 →
→ ~~jacketed~~

1/13/04

He from Joel - Foti
6-8551

→ want it soon

→

→ want

- in lieu of OOA, appeals process thru
DOT sec.

Gary, Aaron

From: Dyck, Jon
Sent: Tuesday, January 13, 2004 4:41 PM
To: Gary, Aaron
Subject: RE: LRB-3983: OCR draft

Incidentally, to the extent that any appeals of OCR decisions are filed, I think DHA's costs are covered through their PR appropriation, not their GPR appropriation. Ultimately, these charges are paid for through railroad assessments. I assume that this would continue to be the case.

-----Original Message-----

From: Gary, Aaron
Sent: Tuesday, January 13, 2004 4:24 PM
To: Dyck, Jon
Subject: RE: LRB-3983: OCR draft

Yes, that's correct. Thanks Jon. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Dyck, Jon
Sent: Tuesday, January 13, 2004 4:16 PM
To: Gary, Aaron
Subject: RE: LRB-3983: OCR draft

Sure! Just to confirm, when you say "DOT's new responsibility" you're referring to the review of OCR orders that are appealed. Correct? In other words, DOT would only get involved if someone decides to appeal the decision. Yes?

PSC, of course, handles administrative duties for OCR, such as budget and personnel matters, but I'll assume that those costs, which are probably fairly small, would not be included. I don't think there are a lot of appeals of OCR cases, but I'll check on that and get back to you.

Jon

-----Original Message-----

From: Gary, Aaron
Sent: Tuesday, January 13, 2004 4:07 PM
To: Dyck, Jon
Cc: Dyke, Don; Kleefisch, Joel
Subject: FW: LRB-3983: OCR draft

Jon,

I am preparing this draft for Rep. Foti, LRB-3983, to attach OCR to DOT instead of PSC, and also to provide for review of OCR decisions by DOT instead of DOA division of hearings and appeals (DOA DHA).

Can you provide assistance with the funding of this new DOT responsibility? I was thinking the starting point would be an approximation of how many OCR orders and decisions DOA DHA handles and what the approximate funding requirement is for these. Then drafting an appropriation decrease for DOA DHA, and an appropriation increase (or new appropriation) for DOT (presumably from GPR) corresponding to DOT's handling of the same function. Do you have time to assist in identifying the appropriations and dollar amounts for this? Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Kleefisch, Joel
Sent: Tuesday, January 13, 2004 3:39 PM
To: Gary, Aaron
Subject: RE: LRB-3983: OCR draft

Aaron,

Please bring Jon Dyck into your draft planning. I would imagine the overfunding from the Commissioner of Railroads office could be transferred to the DOT for appeals hearing purposes. As for the specific amounts please ask Jon what he would recommend. Please feel free to include Don Dyke in the discussions.

Joel Kleefisch
Media Director/District Manager
Rep. Foti

-----Original Message-----

From: Gary, Aaron
Sent: Tuesday, January 13, 2004 2:30 PM
To: Kleefisch, Joel
Subject: LRB-3983: OCR draft

Joel,

I have begun working on this draft to move the office of commissioner of railroads so that it is attached to DOT instead of the PSC. As we discussed, I hope to complete drafting it sometime next week. I did have a call from Don Dyke on this today to see what stage the draft was in and I advised him of the same. If you want me to include Don in my communications with you, please let me know.

The time-consuming part of the draft arises from the need to review many, many references to the office throughout the statutes and make all necessary reference changes. There are also funding issues implicated in this draft and I would suggest that Jon Dyck at LFB be brought into this to provide assistance with the funding. Under current law, OCR is funded from GPR. DOT operates from SEG funds of the transportation fund. I have created new appropriations under DOT that continue to use GPR funds for OCR. But changing the appeals system has funding implications that complicate the draft. Right now, OCR decisions are appealed through the normal mechanism (administrative review and then judicial review under ch. 227 - see s. 189.02 (4).) Changing this standard mechanism will create a funding imbalance unless funding changes are made also. (I understand you want appeals to go to DOT rather than DOA division of hearings and appeals.) Requiring DOT to handle review of the many OCR orders will create an additional responsibility and cost on DOT that DOT will either have to absorb in its existing budget or need additional funding for (SEG or GPR??). Funding is also "built in" to the existing structure providing for appeals to DOA division of hearings and appeals (I'm not sure what the current volume is, but I don't think it is insignificant). So to take this responsibility away from the division without a reduction in funding leaves the division "overfunded". Do you want to omit appropriation changes corresponding to the change in review responsibilities, or can you provide me with information (or have Jon Dyck do so) identifying the specific appropriations and funding amounts that need to be changed?

Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau

608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

- Matt & James

1/14/04

Jon

Dyck

6-9919

have info. on OCR

- appeals go to the circuit court
- div. of hrg. & appeal → doesn't go thru

- ~~A Note this~~ : e-mail to Joel

Gary, Aaron

From: Kleefisch, Joel
Sent: Wednesday, January 14, 2004 2:11 PM
To: Gary, Aaron
Subject: RE: LRB-3983: OCR draft

Aaron,

Please have the appeal be in lieu of a judicial remedy.

Joel

-----Original Message-----

From: Gary, Aaron
Sent: Wednesday, January 14, 2004 1:31 PM
To: Kleefisch, Joel
Cc: Dyck, Jon; Dyke, Don
Subject: RE: LRB-3983: OCR draft

Joel,

Jon Dyck advised me (via OCR) that in fact there is no administrative review of OCR decisions - appeal goes straight to the circuit court. OCR advised that last year they actually had no appeals, and that this is not a significant funding issue.

This means that providing for DOT review would create a level of administrative review that doesn't currently exist. Do you still want to do so? If so, do you want that review to be in addition to the circuit court review or in lieu of a judicial remedy? I should note that, as I have been drafting, I have noticed a few instances in the statutes where OCR actually reviews certain decisions/actions of DOT, so to then have DOT review the OCR review might be a little awkward.

The draft is pretty close to finished. Please let me know how you want to proceed on the issue of DOT review. Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

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Needed
by 1/27LRB-3983/P1
ARG: *[Signature]*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

A-Note

Gen

- 1 AN ACT ...; **relating to:** attaching the Office of the Commissioner of Railroads to
2 the Department of Transportation, review of decisions of the Office of the
3 Commissioner of Railroads, and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the Office of the Commissioner of Railroads (OCR), which is attached to the Public Service Commission (PSC), regulates railroad activities in Wisconsin. Decisions of OCR are subject to judicial review.

This bill attaches OCR to the Department of Transportation (DOT) instead of the PSC and removes certain vestigial references to railroads in statutes relating to the PSC and utilities. The bill also provides for review of OCR decisions by DOT and eliminates judicial review of OCR decisions.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 4 SECTION 1. 15.03 [✓] of the statutes is amended to read:
5 **15.03 Attachment for limited purposes.** Any division, office, commission,
6 council or board attached under this section to a department or independent agency

1 or a specified division thereof shall be a distinct unit of that department, independent
2 agency or specified division. Any division, office, commission, council or board so
3 attached shall exercise its powers, duties and functions prescribed by law, including
4 rule making, licensing and regulation, and operational planning within the area of
5 program responsibility of the division, office, commission, council or board,
6 independently of the head of the department or independent agency, but budgeting,
7 program coordination and related management functions shall be performed under
8 the direction and supervision of the head of the department or independent agency,
9 ~~except that with respect to the office of the commissioner of railroads, all personnel~~
10 ~~and biennial budget requests by the office of the commissioner of railroads shall be~~
11 ~~provided to the department of transportation as required under s. 189.02 (7) and~~
12 ~~shall be processed and properly forwarded by the public service commission without~~
13 ~~change except as requested and concurred in by the office of the commissioner of~~
14 ~~railroads.~~

15 [✓]
SECTION 2. 15.79 of the statutes is amended to read:

16 **15.79 Public service commission; creation.** There is created a public
17 service commission. No member of the commission may have a financial interest in
18 a railroad or public utility. If any member voluntarily becomes so interested, the
19 member's office shall become vacant. If the member involuntarily becomes so
20 interested, the member's office shall become vacant unless the member divests
21 himself or herself of the interest within a reasonable time. No commissioner may
22 serve on or under any committee of a political party. Each commissioner shall hold
23 office until a successor is appointed and qualified.

24 [✕]
SECTION 3. 15.795 (title) of the statutes is renumbered 15.469 (title).

X

1 SECTION 4. 15.795 (1) of the statutes, as affected by 2003 Wisconsin Act 89, is
2 renumbered 15.469 (1) and amended to read:

3 ^{no}~~15.469~~ (1) OFFICE OF THE COMMISSIONER OF RAILROADS. There is created an office
4 of the commissioner of railroads which is attached to the ~~public service commission~~
5 department of transportation under s. 15.03, provided that s. 85.02 (1) does not apply
6 to the office of the commissioner of railroads. The commissioner of railroads shall
7 have expertise in railroad issues and may not have a financial interest in a railroad,
8 as defined in s. 195.02 (1). The commissioner may not serve on or under any
9 committee of a political party. The commissioner shall hold office until a successor
10 is appointed and qualified.

History: 1993 a. 123; 2003 a. 89.

11 ~~SECTION 5. 20.155 (intro.) of the statutes is amended to read:~~
12 ~~20.155 Public service commission. (intro.) There is appropriated to the~~
13 ~~public service commission for the following programs program:~~

14 ~~SECTION 6.~~ 20.155 (2) of the statutes is repealed.

15 ~~SECTION 7.~~ 20.395 (2) (gg) of the statutes is created to read:

16 20.395 (2) (gg) *Railroad payments*. From the general fund, all moneys received
17 from railroads under s. 195.60 and credited to this appropriation account for
18 activities related to railroad regulation under chs. 190 to 195, for such purposes.

19 ~~SECTION 8.~~ 20.395 (2) (gq) of the statutes is amended to read:

20 20.395 (2) (gq) *Railroad crossing improvement and protection maintenance*
21 and railroad regulation, state funds. The amounts in the schedule to pay the costs
22 for railroad crossing protection maintenance under s. 195.28 (3) and for activities
23 related to railroad regulation under chs. 190 to 195.

24 ~~SECTION 9.~~ 20.395 (2) (gx) of the statutes is amended to read:

20.395 (2) (gx) *Railroad crossing improvement and railroad regulation, federal funds*. All moneys received from the federal government for the purposes of railroad crossing protection under s. 195.28, for activities related to railroad regulation under chs. 190 to 195, and for the purposes of railroad crossing gates under 1999 Wisconsin Act 9, section 9150 (9g), for such purposes.

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64.

~~SECTION 10.~~ 20.923 (4) (e) 11. of the statutes is amended to read:

20.923 (4) (e) 11. ~~Public service commission~~ Transportation, department of, office of the commissioner of railroads: commissioner.

History: 1971 c. 18, 125, 164; 1971 c. 270 ss. 98, 104; 1971 c. 307, 321; 1973 c. 90, 156, 243, 333; 1975 c. 28; 1975 c. 39 ss. 236e to 247, 735 (5); 1975 Ex. Order No. 24; 1975 c. 189, 199, 224, 422; 1977 c. 29 ss. 399g to 406d, 1649, 1650m, 1654 (8) (e), 1656 (43); 1977 c. 44; 1977 c. 187 ss. 29, 30, 31, 135; 1977 c. 196 ss. 74 to 76m, 131; 1977 c. 203, 272, 277, 418, 447, 449; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1979 c. 32 s. 92 (1); 1979 c. 34, 89, 189; 1979 c. 221 ss. 201m to 218, 2202 (13); 1979 c. 361; 1981 c. 20 ss. 587 to 592g, 2202 (33) (b), (c), (56) (a); 1981 c. 96 ss. 16, 67; 1981 c. 121, 127, 347, 353; 1981 c. 390 s. 252; 1983 a. 27, 46, 121, 192, 371, 378; 1985 a. 18, 23; 1985 a. 29 ss. 603 to 607, 3202 (22) (a); 1985 a. 34, 332; 1987 a. 6, 27, 82, 119, 306, 340, 354, 399, 403; 1989 a. 31, 56, 107, 208, 219, 336; 1991 a. 39, 269; 1993 a. 12, 16, 75, 123, 144, 184, 294, 349, 399, 490; 1995 a. 27 ss. 1193 to 1217m, 9130 (4), 9216 (19); 1995 a. 37, 216, 225; 1997 a. 2, 3, 27, 29, 41, 194, 237; 1999 a. 9, 42, 102, 186; 2001 a. 16, 19, 29, 109; 2003 a. 33 ss. 721 to 735m, 9160, 2003 a. 91.

~~SECTION 11.~~ 25.40 (1) (a) 12m. of the statutes is created to read:

25.40 (1) (a) 12m. Moneys collected under s. 195.60 that are deposited in the general fund, ^{percent} 90% of which are credited to the appropriation under s. 20.395 (2) (gg).

~~SECTION 12.~~ 25.40 (1) (f) 1. of the statutes is amended to read:

25.40 (1) (f) 1. Moneys received from the federal government, for the regulation of railroads, that are deposited in the general fund and credited to the appropriation under s. ~~20.155 (2) (m)~~ 20.395 (2) (gx).

History: 1971 c. 125, 211; 1973 c. 90, 333; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 199; 1977 c. 29, 274, 418, 447; 1979 c. 34; 1979 c. 361 s. 113; 1981 c. 20; 1981 c. 347 s. 80 (2), (4); 1983 a. 27, 538; 1985 a. 16 s. 15; 1985 a. 29 ss. 638p, 3202 (51); 1985 a. 120 ss. 66, 3202 (56); 1985 a. 332; 1987 a. 3, 27, 110, 399, 403; 1989 a. 31, 102, 105, 359; 1991 a. 39, 104, 189, 269, 309, 315; 1993 a. 16, 123, 205, 253, 415, 437, 491; 1995 a. 27, 113, 201, 269, 280, 445; 1997 a. 27, 35, 41, 135, 237, 255; 1999 a. 9, 32, 92, 167; 2001 a. 16; 2003 a. 33.

~~SECTION 13.~~ 182.36 (3) of the statutes is amended to read:

182.36 (3) The corporation may enter into contracts with public utilities, ~~including and~~ railroads, for the removal or change in location of the lines of such public utilities and railroads where the same is deemed necessary by the corporation in the construction of the project. Such contracts shall be for the payment of damages

caused the utilities and railroads by the relocation of their lines. In the event the corporation and the utility or railroad are unable to reach an agreement, the public service commission in the case of a utility or the office of the commissioner of railroads in the case of a railroad shall direct the manner, location and time allowed for the change in the utility or railroad line and the corporation shall be liable for the reasonable costs of such change. In the event the public utility or railroad fails to comply with the order of the public service commission or the office of the commissioner of railroads it shall be liable to the corporation for all damages occasioned by such failure.

SECTION ~~14~~ 189.02 (3m) of the statutes is amended to read:

189.02 (3m) (a) Except as provided in ~~ss.~~ ss. 15.03 and 189.02 (4), the ~~public service commission~~ department of transportation shall have no control or jurisdiction over the office in matters relating to railroad regulation.

(b) Notwithstanding par. (a), the commissioner of railroads shall seek the input of, and give considerable weight to the advice given by, the ~~chairperson of the public service commission~~ secretary on matters relating to the employment of persons by the office.

History: 1977 c. 29; 1979 c. 32 s. 92(1); 1981 c. 347 ss. 22, 80 (1), (2); 1983 a. 27; 1985 a. 182 s. 57; 1993 a. 16, 123; 1999 a. 9.

SECTION ~~15~~ 189.02 (4) of the statutes is repealed and recreated to read:

189.02 (4) Any person aggrieved by a final decision of the office is entitled, upon written request to the department within 30 days after the decision, to review by the department of the office decision. The secretary shall designate a subunit of the department to handle the review of office decisions under this subsection. The department shall decide the matter under review, in accordance with procedures established by the department, after notice and a contested case hearing. Upon

1 review, the department may reverse, confirm, or modify the decision of the office. All
2 decisions of the department under this subsection are final and not subject to judicial
3 review under ch. 227.

4 ~~SECTION 16.~~ 189.02 (7) of the statutes is repealed.

5 ~~SECTION 17.~~ 191.09 (2) of the statutes is amended to read:

6 191.09 (2) ~~COURT~~ DEPARTMENT REVIEW OF ORDERS. Orders of the office under this
7 chapter shall be subject to review ~~in the manner provided in ch. 227~~ as provided
8 under s. 189.02 (4).

History: 1981 c. 347 ss. 27, 80 (1); 1981 c. 390; 1993 a. 16, 123; 1995 a. 417.

9 ~~SECTION 18.~~ 192.29 (1) of the statutes is amended to read:

10 192.29 (1) SETTING MAXIMUM SPEED. Upon petition to the office by the governing
11 body of any city or village or by any railroad corporation alleging that any railroad
12 crossing of one or more public highways or streets in the city or village is dangerous
13 to human life and that public safety requires a designation of the maximum speed
14 of a train over such crossing or crossings, or that an order previously made by the
15 office should be modified, the office shall give notice to the parties in interest and
16 order a hearing thereon in the manner provided by s. 195.04. If after the hearing the
17 office shall determine that the crossing or crossings described in the petition are
18 dangerous to human life, it may by order determine what maximum speed of a train
19 over the crossing is reasonably required by public safety and is consistent with the
20 public need for adequate and expeditious passenger and freight service by railroad,
21 having due regard for other orders entered by the office and to practical railroad
22 operating conditions. Where the office has designated the maximum speed of any
23 train or trains over such crossing or crossings, the rate of speed shall be the lawful
24 maximum speed at which any train affected by the order can be operated over the

1 public highway or street crossing, until changed by subsequent order of the office.
2 Every railroad corporation violating any order entered under this subsection shall
3 for every violation forfeit not less than \$10 nor more than \$100. The jurisdiction over
4 train speeds hereby vested in the office shall be exclusive, but any order entered by
5 the office hereunder shall be subject to ~~judicial~~ review in the manner provided by ~~ch.~~
6 227 under s. 189.02 (4).

History: 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1977 c. 116; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254.

7 ~~SECTION 19.~~ 195.055 of the statutes is amended to read:

8 **195.055 Judicial Department review.** All orders and determinations of the
9 office are subject to ~~judicial~~ ^{no strike space} review ~~under ch. 227~~ as provided in s. 189.02 (4).

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

10 ~~SECTION 20.~~ 195.06 of the statutes is amended to read:

11 **195.06 Office orders prima facie lawful.** All orders, determinations and
12 decisions made by the office shall be in force and effective 20 days after the same has
13 been served ~~as required by~~ in the manner provided under s. 227.48 unless the office
14 shall specify a different date upon which the same shall be effective, and shall be
15 prima facie lawful, and all regulations, practices and service prescribed by the office
16 shall be in force and shall be prima facie lawful and reasonable, until finally found
17 otherwise upon ~~judicial~~ review thereof ~~instituted pursuant to ch. 227~~ under s. 189.02
18 (4).

History: 1975 c. 414 s. 28; 1981 c. 347 s. 80 (1); 1985 a. 182 s. 57; 1993 a. 16, 123.

19 ~~SECTION 21.~~ 195.60 (1) of the statutes is amended to read:

20 195.60 (1) Whenever the office in a proceeding upon its own motion, on
21 complaint, or upon an application to it deems it necessary in order to carry out the
22 duties imposed upon it by law to investigate the books, accounts, practices and
23 activities of, or make appraisals of the property of any railroad or to render any
24 engineering or accounting services to any railroad, the railroad shall pay the

1 expenses attributable to such investigation, appraisal or service. The office shall
2 ascertain such expenses, including all expenses incurred by the department at the
3 request or direction of the office and shall render a bill therefor, by mail, to the
4 railroad, either at the conclusion of the investigation, appraisal or services, or during
5 its progress. The bill shall constitute notice of assessment and demand of payment
6 thereof. The railroad shall, within 30 days after the mailing thereof, pay to the office
7 the amount of the special expense for which it is billed. Ninety percent of the
8 payment shall be deposited in the general fund and credited to the appropriation
9 account under s. ~~20.155 (2) (g)~~ 20.395 (2) (gg). The total amount, in any one calendar
10 year, for which any railroad becomes liable, by reason of costs incurred by the office
11 within such calendar year, shall not exceed four-fifths of one percent of its gross
12 operating revenues derived from intrastate operations in the last preceding calendar
13 year. Where, under this subsection, costs are incurred within any calendar year,
14 which are in excess of four-fifths of one percent of such gross operating revenues, the
15 excess costs shall not be chargeable as part of the remainder under sub. (2) but shall
16 be paid out of the general appropriation to the office. Nothing in this subsection shall
17 prevent the office from rendering bills in one calendar year for costs incurred within
18 a previous year. For the purpose of calculating the costs of investigations, appraisals
19 and other services under this subsection, ^{90 percent} ~~90%~~ of the costs determined shall be costs
20 of the office and ^{10 percent} ~~10%~~ of the costs determined shall be costs of state government
21 operations.

History: 1977 c. 29; 1981 c. 347 s. ~~10~~ ¹⁰; 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33.

SECTION ~~22~~ 195.60 (2) of the statutes is amended to read:

23 195.60 (2) The office shall annually, within 90 days after the close of each fiscal
24 year, ascertain the total of its expenditures during such year which are reasonably

1 attributable to the performance of its duties relating to railroads. For purposes of
 2 such calculation, ~~90 percent~~ ^{90 percent} of the expenditures so determined shall be expenditures of the
 3 office and ~~10 percent~~ ^{10 percent} of the expenditures so determined shall be expenditures for state
 4 government operations. The office shall deduct therefrom all amounts chargeable
 5 to railroads under sub. (1) and s. ~~201.10~~ [✓] (3). A sum equal to the remainder plus ~~10 percent~~ ^{10 percent}
 6 of the remainder shall be assessed by the office to the several railroads in proportion
 7 to their respective gross operating revenues during the last calendar year, derived
 8 from intrastate operations. Such assessment shall be paid within 30 days after the
 9 bill has been mailed to the several railroads, which bill shall constitute notice of
 10 assessment and demand of payment thereof. The total amount which may be
 11 assessed to the railroads under authority of this subsection shall not exceed ~~1.85 percent~~ ^{1.85 percent}
 12 of the total gross operating revenues of such railroads, during such calendar year,
 13 derived from intrastate operations. Ninety percent of the payment shall be deposited
 14 in the general fund and credited to the appropriation account under s. ~~20.155 (2) (g)~~ [✓]
 15 ~~20.395 (2) (gg)~~ [✓]. The railroads shall furnish such financial information as the office
 16 requires.

History: 1977 c. 29; 1981 c. 347 s. ~~40 (2)~~ [✓]; 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33.

SECTION ~~23~~ [✓] 197.10 (4) of the statutes is amended to read:

18 197.10 (4) Insofar as the use, operation, service, management, control, sale,
 19 lease, purchase, extension, improvement, rates, value or earnings of the properties
 20 of the public utility or provisions looking toward the ultimate acquisition of the same
 21 are made subject to the terms of any contract provided for in sub. (1), and so long as
 22 said contract remains in force, the following sections of the statutes shall be
 23 inapplicable to the same: ss. ~~195.05~~ [✓], ~~195.10~~ [✓], 196.02 (1) and (2), 196.05, 196.09,
 24 196.10, 196.11, 196.15, 196.16, 196.19 (6), 196.20, 196.21, 196.22, 196.26, 196.28,

1 196.30, 196.37, 196.39, 196.40, 196.58, 196.70, 197.01 (2) to (4), 197.02, 197.03,
2 197.04, 197.05, 197.06, 197.08 and 197.09; provided that nothing in any contract
3 made hereunder shall operate to prevent an appeal to the public service commission
4 by any person, other than a party to said contract, upon any complaint alleging that
5 any rate, fare, charge or classification, or any joint rate, or any regulation, act or
6 practice relating to the production, transmission, delivery or furnishing of gas, heat,
7 light or power, or any service in connection therewith, is unjustly discriminatory, or
8 that any such service is inadequate or cannot be obtained. Upon said appeal the
9 commission shall, as provided by law, determine and by order fix a rate, fare, charge,
10 classification, joint rate or regulation, act or practice or service to be imposed,
11 observed or followed in the future in lieu of that found to be unjustly discriminatory
12 or inadequate.

13 SECTION ~~24~~[#] 201.01[✓] (1) of the statutes is amended to read:

14 201.01 (1) "Commission" means the ~~office of the commissioner of railroads in~~
15 ~~the case of railroads and the public service commission in the case of other public~~
16 ~~service corporations.~~

17 SECTION ~~25~~[#] 201.01[✓] (2) of the statutes is amended to read:

18 201.01 (2) "Public service corporation" means and embraces every corporation,
19 except municipalities and other political subdivisions, which is a public utility as
20 defined in s. 196.01, ~~and every corporation which is a railroad as defined in s. 195.02,~~
21 but shall not include a public utility corporation receiving an annual gross revenue
22 of less than \$1,000 for the calendar year next preceding the issuance of any securities
23 by it. "Public service corporation" includes a holding company, as defined under s.
24 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). "Public service
25 corporation" does not include a telecommunications utility, as defined in s. 196.01

(10). "Public service corporation" does not include any other holding company unless the holding company was formed after November 28, 1985, and unless the commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate, as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do at least one of the items specified in s. 196.795 (7) (a). "Public service corporation" does not include a company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications utility, as defined in s. 196.01 (10), unless such company also owns, operates, manages or controls a public utility which is not a telecommunications utility. "Public service corporation" does not include a transmission company, as defined in s. 196.485 (1) (ge).

SECTION ~~26~~[#] 201.10[✓] (3) of the statutes is amended to read:

201.10 (3) Whenever the commission deems it necessary to make an investigation of the books, accounts and practices or to make an appraisal of the property of any public service corporation which has filed an application for authority to issue any securities to which this chapter is applicable, such public service corporation shall pay all expenses reasonably attributable to such special investigation, or to such an appraisal of the property. For the purpose of calculating investigative and appraisal expenses of the commission, ~~90%~~^{90 percent} of the costs determined shall be costs of the commission and ~~10%~~^{10 percent} of the costs determined shall be costs of state government operations. The procedure set up by s. ~~195.60 or~~[✓] ~~196.85, whichever~~^{no strike space} is appropriate, for the rendering and collection of bills shall be in all ways applicable to the rendering and collection of bills under this section. Ninety percent of the amounts paid to the public service commission under authority of this subsection shall be credited to the appropriation account under s. 20.155 (1) (g).

SECTION ~~27~~[#] 201.13[✓] of the statutes is amended to read:

201.13 Stock. Subject to the regulatory jurisdiction of the commission under this chapter and to all other applicable provisions of law relating to ~~railroad or other~~ special types of corporations, all classes and series of stock of a public service corporation shall be governed by the provisions of ch. 180.

SECTION 28. 226.025 (3) of the statutes is amended to read:

226.025 (3) The appointment of the department of financial institutions or the designation of a resident agent as attorney for the service of summons, notice, pleadings or process under s. 180.1507 shall be applicable only to actions or proceedings against the foreign corporations described in this section (unless such corporations have been admitted to this state for purposes other than those mentioned in this section) where the cause of action or proceeding arises out of transactions between such foreign corporations and public utilities operating in this state with which such foreign corporations are affiliated; and to actions or proceedings by or before the public service commission ~~or office of the commissioner of railroads~~ involving the transactions described in sub. (1), or involving the relation between such foreign corporations and public utilities operating in this state with which they are affiliated.

(END)

S - Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3983/P1dn

ARG: *[Signature]*

Date

ATTN: Joel Kleefisch

The attached draft "moves" the appropriations for OCR from the PSC to DOT but does not otherwise change the amount of funding for OCR or for DOT. The attached draft does not provide additional funding to DOT for reviewing OCR decisions. Is this okay?

In accordance with the drafting instructions, the attached draft provides for review of OCR decisions by DOT in lieu of judicial review. As discussed by e-mail, one of OCR's duties is to review certain petitions and actions of DOT. See, e.g., ss. 84.05, 195.28, and 195.29. The attached draft therefore creates the unusual procedure whereby, in certain circumstances, OCR acts as an authority "above" DOT but then has its decisions subject to review by DOT.

The attached draft does not change any existing duties of OCR or DOT other than DOT review of OCR decisions. If you would like DOT to directly assume any duty currently assigned to OCR, please let me know.

I recommend that Jon Dyck at the LFB review this draft to advise on the funding issues.

Please let me know if you would like any changes. If the draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3983/P1dn
ARG:kjf:pg

January 23, 2004

ATTN: Joel Kleefisch

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I recommend that Jon Dyck at the LFB review this draft to advise on the funding issues.

Please let me know if you would like any changes. If the draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

He w/ Joel

1/27/04

- wants to ~~make~~ take ultimate authority
away from OCR & give it to DOT
on crossing decision.

- ARls will evaluate options to give DOT
ultimate authority

• maybe dept. may sue state do something &
it is not subject

Gary, Aaron

From: Kleefisch, Joel
Sent: Wednesday, January 28, 2004 2:44 PM
To: Gary, Aaron
Subject: RE: OCR draft option

Aaron,

That sounds like an amicable solution.

Joel

-----Original Message-----

From: Gary, Aaron
Sent: Wednesday, January 28, 2004 1:51 PM
To: Kleefisch, Joel
Subject: OCR draft option

Joel,

Following up on our telephone conversation yesterday, would it meet your needs if, instead of providing for ultimate DOT review of *every* OCR decision, the bill created an exception to the usual process so that DOT, on its own initiative and on a case-by-case basis, could preempt the OCR process and directly make the final determination on matters related to railroad crossings. This would essentially give DOT the authority, to use whenever it felt was necessary, to step in and make the ultimate decision without being subject to OCR review. I think this could address the concerns we discussed giving rise to the draft, and take care of particular problematic situations, without the complexity of totally revising the existing system. Let me know if you think this would work or if you have other ideas. Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

Needed
by 2/6
end of day

LRB-3983/1

ARG:kjf:AM

RMR

b-note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

related to railroad crossing
protection improvements

Regen

1 AN ACT *to repeal* 20.155 (2) and 189.02 (7); *to renumber* 15.795 (title); *to*
2 *renumber and amend* 15.795 (1); *to amend* 15.03, 15.79, 20.395 (2) (gq),
3 20.395 (2) (gx), 20.923 (4) (e) 11., 25.40 (1) (f) 1., 182.36 (3), 189.02 (3m), 191.09
4 (2), 192.29 (1), 195.055, 195.06, 195.60 (1), 195.60 (2), 197.10 (4), 201.01 (1),
5 201.01 (2), 201.10 (3), 201.13 and 226.025 (3); *to repeal and recreate* 189.02
6 (4); and *to create* 20.395 (2) (gg) and 25.40 (1) (a) 12m. of the statutes; **relating**
7 **to:** attaching the Office of the Commissioner of Railroads to the Department of
8 Transportation, ~~review of decisions of the Office of the Commissioner of~~
9 ~~Railroads~~ and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the Office of the Commissioner of Railroads (OCR), which is attached to the Public Service Commission (PSC), regulates railroad activities in Wisconsin. ~~Decisions of OCR are subject to judicial review.~~

This bill attaches OCR to the Department of Transportation (DOT) instead of the PSC and removes certain vestigial references to railroads in statutes relating to the PSC and utilities. ~~The bill also provides for review of OCR decisions by DOT and eliminates judicial review of OCR decisions.~~

insert ANAL - B

insert ANAL - A

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.03[✓] of the statutes is amended to read:

2 **15.03 Attachment for limited purposes.** Any division, office, commission,
3 council or board attached under this section to a department or independent agency
4 or a specified division thereof shall be a distinct unit of that department, independent
5 agency or specified division. Any division, office, commission, council or board so
6 attached shall exercise its powers, duties and functions prescribed by law, including
7 rule making, licensing and regulation, and operational planning within the area of
8 program responsibility of the division, office, commission, council or board,
9 independently of the head of the department or independent agency, but budgeting,
10 program coordination and related management functions shall be performed under
11 the direction and supervision of the head of the department or independent agency,
12 ~~except that with respect to the office of the commissioner of railroads, all personnel~~
13 ~~and biennial budget requests by the office of the commissioner of railroads shall be~~
14 ~~provided to the department of transportation as required under s. 189.02 (7) and~~
15 ~~shall be processed and properly forwarded by the public service commission without~~
16 ~~change except as requested and concurred in by the office of the commissioner of~~
17 railroads.

18 **SECTION 2.** 15.79[✓] of the statutes is amended to read:

19 **15.79 Public service commission; creation.** There is created a public
20 service commission. No member of the commission may have a financial interest in
21 a railroad or public utility. If any member voluntarily becomes so interested, the

1 member's office shall become vacant. If the member involuntarily becomes so
2 interested, the member's office shall become vacant unless the member divests
3 himself or herself of the interest within a reasonable time. No commissioner may
4 serve on or under any committee of a political party. Each commissioner shall hold
5 office until a successor is appointed and qualified.

6 SECTION 3. 15.795 (title) of the statutes is renumbered 15.469 (title).

7 SECTION 4. 15.795 (1) of the statutes, as affected by 2003 Wisconsin Act 89, is
8 renumbered 15.469 (1) and amended to read:

9 15.469 (1) OFFICE OF THE COMMISSIONER OF RAILROADS. There is created an office
10 of the commissioner of railroads which is attached to the ~~public service commission~~
11 department of transportation under s. 15.03, provided that s. 85.02 (1) does not apply
12 to the office of the commissioner of railroads. The commissioner of railroads shall
13 have expertise in railroad issues and may not have a financial interest in a railroad,
14 as defined in s. 195.02 (1). The commissioner may not serve on or under any
15 committee of a political party. The commissioner shall hold office until a successor
16 is appointed and qualified.

17 SECTION 5. 20.155 (2) of the statutes is repealed.

18 SECTION 6. 20.395 (2) (gg) of the statutes is created to read:

19 20.395 (2) (gg) *Railroad payments*. From the general fund, all moneys received
20 from railroads under s. 195.60 and credited to this appropriation account for
21 activities related to railroad regulation under chs. 190 to 195, for such purposes.

22 SECTION 7. 20.395 (2) (gq) of the statutes is amended to read:

23 20.395 (2) (gq) *Railroad crossing improvement and protection maintenance*
24 and railroad regulation, state funds. The amounts in the schedule to pay the costs

1 for railroad crossing protection maintenance under s. 195.28 (3) and for activities
2 related to railroad regulation under chs. 190 to 195.

3 **SECTION 8.** 20.395 (2) (gx) of the statutes is amended to read:

4 20.395 (2) (gx) *Railroad crossing improvement and railroad regulation, federal*
5 *funds.* All moneys received from the federal government for the purposes of railroad
6 crossing protection under s. 195.28, for activities related to railroad regulation under
7 chs. 190 to 195, and for the purposes of railroad crossing gates under 1999 Wisconsin
8 Act 9, section 9150 (9g), for such purposes.

9 **SECTION 9.** 20.923 (4) (e) 11. of the statutes is amended to read:

10 20.923 (4) (e) 11. ~~Public service commission~~ Transportation, department of;
11 office of the commissioner of railroads: commissioner.

12 **SECTION 10.** 25.40 (1) (a) 12m. of the statutes is created to read:

13 25.40 (1) (a) 12m. Moneys collected under s. 195.60 that are deposited in the
14 general fund, 90 percent of which are credited to the appropriation under s. 20.395
15 (2) (gg).

16 **SECTION 11.** 25.40 (1) (f) 1. of the statutes is amended to read:

17 25.40 (1) (f) 1. Moneys received from the federal government, for the regulation
18 of railroads, that are deposited in the general fund and credited to the appropriation
19 under s. ~~20.155 (2) (m)~~ 20.395 (2) (gx).

20 **SECTION ~~12.~~** 182.36 (3) of the statutes is amended to read:

21 182.36 (3) The corporation may enter into contracts with public utilities,
22 ~~including and~~ and railroads, for the removal or change in location of the lines of such
23 public utilities and railroads where the same is deemed necessary by the corporation
24 in the construction of the project. Such contracts shall be for the payment of damages
25 caused the utilities and railroads by the relocation of their lines. In the event the

1 corporation and the utility or railroad are unable to reach an agreement, the public
2 service commission in the case of a utility or the office of the commissioner of
3 railroads in the case of a railroad shall direct the manner, location and time allowed
4 for the change in the utility or railroad line and the corporation shall be liable for the
5 reasonable costs of such change. In the event the public utility or railroad fails to
6 comply with the order of the public service commission or the office of the
7 commissioner of railroads it shall be liable to the corporation for all damages
8 occasioned by such failure.

9 SECTION ~~13~~ 189.02 (3m) of the statutes is amended to read:

*subject to
S. 84.05 (3)*

10 189.02 (3m) (a) Except as provided in ~~s. 15.03~~ ^{delete strike} ~~and 189.02 (a)~~ ^{no strike} ² the public
11 ~~service commission~~ department of transportation shall have no control or
12 jurisdiction over the office in matters relating to railroad regulation.

13 (b) Notwithstanding par. (a), the commissioner of railroads shall seek the input
14 of, and give considerable weight to the advice given by, the ~~chairperson of the public~~
15 ~~service commission~~ secretary on matters relating to the employment of persons by
16 the office.

17 SECTION 14. 189.02 (4) of the statutes is repealed and recreated to read:

18 189.02 (4) Any person aggrieved by a final decision of the office is entitled, upon
19 written request to the department within 30 days after the decision, to review by the
20 department of the office decision. The secretary shall designate a subunit of the
21 department to handle the review of office decisions under this subsection. The
22 department shall decide the matter under review, in accordance with procedures
23 established by the department, after notice and a contested case hearing. Upon
24 review, the department may reverse, confirm, or modify the decision of the office. All

1 decisions of the department under this subsection are final and not subject to judicial
2 review under ch. 227.

3 SECTION ~~15~~ 189.02 (7) of the statutes is repealed.

4 SECTION 16. 191.09 (2) of the statutes is amended to read:

5 191.09 (2) ~~COURT~~ DEPARTMENT REVIEW OF ORDERS. Orders of the office under this
6 chapter shall be subject to review in the manner provided in ch. 227 as provided
7 under s. 189.02 (4).

8 SECTION 17. 192.29 (1) of the statutes is amended to read:

9 192.29 (1) SETTING MAXIMUM SPEED. Upon petition to the office by the governing
10 body of any city or village or by any railroad corporation alleging that any railroad
11 crossing of one or more public highways or streets in the city or village is dangerous
12 to human life and that public safety requires a designation of the maximum speed
13 of a train over such crossing or crossings, or that an order previously made by the
14 office should be modified, the office shall give notice to the parties in interest and
15 order a hearing thereon in the manner provided by s. 195.04. If after the hearing the
16 office shall determine that the crossing or crossings described in the petition are
17 dangerous to human life, it may by order determine what maximum speed of a train
18 over the crossing is reasonably required by public safety and is consistent with the
19 public need for adequate and expeditious passenger and freight service by railroad,
20 having due regard for other orders entered by the office and to practical railroad
21 operating conditions. Where the office has designated the maximum speed of any
22 train or trains over such crossing or crossings, the rate of speed shall be the lawful
23 maximum speed at which any train affected by the order can be operated over the
24 public highway or street crossing, until changed by subsequent order of the office.
25 Every railroad corporation violating any order entered under this subsection shall

for every violation forfeit not less than \$10 nor more than \$100. The jurisdiction over train speeds hereby vested in the office shall be exclusive, but any order entered by the office hereunder shall be subject to judicial review in the manner provided by ch. 227 under s. 189.02 (4).

SECTION 18. 195.055 of the statutes is amended to read:

Subject to s. 84.05 (3) all

195.055 ~~Judicial Department~~ review. All orders and determinations of the office are subject to judicial review under ch. 227, as provided in s. 189.02 (4).

SECTION 19. 195.06 of the statutes is amended to read:

195.06 Office orders prima facie lawful. All orders, determinations and decisions made by the office shall be in force and effective 20 days after the same has been served as required by in the manner provided under s. 227.48 unless the office shall specify a different date upon which the same shall be effective, and shall be prima facie lawful, and all regulations, practices and service prescribed by the office shall be in force and shall be prima facie lawful and reasonable, until finally found otherwise upon judicial review thereof instituted pursuant to ch. 227 under s. 189.02 (4).

SECTION 20. 195.60 (1) of the statutes is amended to read:

195.60 (1) Whenever the office in a proceeding upon its own motion, on complaint, or upon an application to it deems it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make appraisals of the property of any railroad or to render any engineering or accounting services to any railroad, the railroad shall pay the expenses attributable to such investigation, appraisal or service. The office shall ascertain such expenses, including all expenses incurred by the department at the request or direction of the office and shall render a bill therefor, by mail, to the

1 railroad, either at the conclusion of the investigation, appraisal or services, or during
2 its progress. The bill shall constitute notice of assessment and demand of payment
3 thereof. The railroad shall, within 30 days after the mailing thereof, pay to the office
4 the amount of the special expense for which it is billed. Ninety percent of the
5 payment shall be deposited in the general fund and credited to the appropriation
6 account under s. ~~20.155 (2) (g)~~ 20.395 (2) (gg). The total amount, in any one calendar
7 year, for which any railroad becomes liable, by reason of costs incurred by the office
8 within such calendar year, shall not exceed four-fifths of one percent of its gross
9 operating revenues derived from intrastate operations in the last preceding calendar
10 year. Where, under this subsection, costs are incurred within any calendar year,
11 which are in excess of four-fifths of one percent of such gross operating revenues, the
12 excess costs shall not be chargeable as part of the remainder under sub. (2) but shall
13 be paid out of the general appropriation to the office. Nothing in this subsection shall
14 prevent the office from rendering bills in one calendar year for costs incurred within
15 a previous year. For the purpose of calculating the costs of investigations, appraisals
16 and other services under this subsection, ~~90%~~ 90 percent of the costs determined
17 shall be costs of the office and ~~10%~~ 10 percent of the costs determined shall be costs
18 of state government operations.

19 ~~SECTION 21.~~ SECTION 21. 195.60 (2) of the statutes is amended to read:

20 195.60 (2) The office shall annually, within 90 days after the close of each fiscal
21 year, ascertain the total of its expenditures during such year which are reasonably
22 attributable to the performance of its duties relating to railroads. For purposes of
23 such calculation, ~~90%~~ 90 percent of the expenditures so determined shall be
24 expenditures of the office and ~~10%~~ 10 percent of the expenditures so determined shall
25 be expenditures for state government operations. The office shall deduct therefrom

1 all amounts chargeable to railroads under sub. (1) ~~and s. 201.10 (3)~~. A sum equal to
2 the remainder plus ~~10%~~ 10 percent of the remainder shall be assessed by the office
3 to the several railroads in proportion to their respective gross operating revenues
4 during the last calendar year, derived from intrastate operations. Such assessment
5 shall be paid within 30 days after the bill has been mailed to the several railroads,
6 which bill shall constitute notice of assessment and demand of payment thereof. The
7 total amount which may be assessed to the railroads under authority of this
8 subsection shall not exceed ~~1.85%~~ 185 percent of the total gross operating revenues
9 of such railroads, during such calendar year, derived from intrastate operations.
10 Ninety percent of the payment shall be deposited in the general fund and credited
11 to the appropriation account under s. ~~20.155 (2) (g)~~ 20.395 (2) (gg). The railroads
12 shall furnish such financial information as the office requires.

13 ~~SECTION 22.~~ [#] 197.10 (4) of the statutes is amended to read:

14 197.10 (4) Insofar as the use, operation, service, management, control, sale,
15 lease, purchase, extension, improvement, rates, value or earnings of the properties
16 of the public utility or provisions looking toward the ultimate acquisition of the same
17 are made subject to the terms of any contract provided for in sub. (1), and so long as
18 said contract remains in force, the following sections of the statutes shall be
19 inapplicable to the same: ss. ~~195.05, 195.10,~~ 196.02 (1) and (2), 196.05, 196.09,
20 196.10, 196.11, 196.15, 196.16, 196.19 (6), 196.20, 196.21, 196.22, 196.26, 196.28,
21 196.30, 196.37, 196.39, 196.40, 196.58, 196.70, 197.01 (2) to (4), 197.02, 197.03,
22 197.04, 197.05, 197.06, 197.08 and 197.09; provided that nothing in any contract
23 made hereunder shall operate to prevent an appeal to the public service commission
24 by any person, other than a party to said contract, upon any complaint alleging that
25 any rate, fare, charge or classification, or any joint rate, or any regulation, act or

1 practice relating to the production, transmission, delivery or furnishing of gas, heat,
2 light or power, or any service in connection therewith, is unjustly discriminatory, or
3 that any such service is inadequate or cannot be obtained. Upon said appeal the
4 commission shall, as provided by law, determine and by order fix a rate, fare, charge,
5 classification, joint rate or regulation, act or practice or service to be imposed,
6 observed or followed in the future in lieu of that found to be unjustly discriminatory
7 or inadequate.

8 ~~SECTION 23.~~ 201.01 (1) ✓ of the statutes is amended to read:

9 201.01 (1) "Commission" means the ~~office of the commissioner of railroads in~~
10 ~~the case of railroads and the public service commission in the case of other public~~
11 ~~service corporations.~~

12 ~~SECTION 24.~~ 201.01 (2) ✓ of the statutes is amended to read:

13 201.01 (2) "Public service corporation" means and embraces every corporation,
14 except municipalities and other political subdivisions, which is a public utility as
15 defined in s. 196.01, ~~and every corporation which is a railroad as defined in s. 195.02,~~
16 but shall not include a public utility corporation receiving an annual gross revenue
17 of less than \$1,000 for the calendar year next preceding the issuance of any securities
18 by it. "Public service corporation" includes a holding company, as defined under s.
19 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). "Public service
20 corporation" does not include a telecommunications utility, as defined in s. 196.01
21 (10). "Public service corporation" does not include any other holding company unless
22 the holding company was formed after November 28, 1985, and unless the
23 commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate,
24 as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do
25 at least one of the items specified in s. 196.795 (7) (a). "Public service corporation"

1 does not include a company, as defined in s. 196.795 (1) (f), which owns, operates,
2 manages or controls a telecommunications utility, as defined in s. 196.01 (10), unless
3 such company also owns, operates, manages or controls a public utility which is not
4 a telecommunications utility. "Public service corporation" does not include a
5 transmission company, as defined in s. 196.485 (1) (ge).

6 ~~SECTION 25.~~ ¹¹ 201.10 (3) ✓ of the statutes is amended to read:

7 201.10 (3) Whenever the commission deems it necessary to make an
8 investigation of the books, accounts and practices or to make an appraisal of the
9 property of any public service corporation which has filed an application for
10 authority to issue any securities to which this chapter is applicable, such public
11 service corporation shall pay all expenses reasonably attributable to such special
12 investigation, or to such an appraisal of the property. For the purpose of calculating
13 investigative and appraisal expenses of the commission, ~~90%~~ 90 percent of the costs
14 determined shall be costs of the commission and ~~10%~~ 10 percent of the costs
15 determined shall be costs of state government operations. The procedure set up by
16 s. ~~195.60 or 196.85, whichever is appropriate,~~ for the rendering and collection of bills
17 shall be in all ways applicable to the rendering and collection of bills under this
18 section. Ninety percent of the amounts paid to the ~~public service~~ commission under
19 authority of this subsection shall be credited to the appropriation account under s.
20 20.155 (1) (g).

21 ~~SECTION 26.~~ ¹¹ 201.13 ✓ of the statutes is amended to read:

22 **201.13 Stock.** Subject to the regulatory jurisdiction of the commission under
23 this chapter and to all other applicable provisions of law relating to ~~railroad or other~~
24 special types of corporations, all classes and series of stock of a public service
25 corporation shall be governed by the provisions of ch. 180.

SECTION 27. 226.025 (3) of the statutes is amended to read:

226.025 (3) The appointment of the department of financial institutions or the designation of a resident agent as attorney for the service of summons, notice, pleadings or process under s. 180.1507 shall be applicable only to actions or proceedings against the foreign corporations described in this section (unless such corporations have been admitted to this state for purposes other than those mentioned in this section) where the cause of action or proceeding arises out of transactions between such foreign corporations and public utilities operating in this state with which such foreign corporations are affiliated; and to actions or proceedings by or before the public service commission ~~or office of the commissioner of railroads~~ involving the transactions described in sub. (1), or involving the relation between such foreign corporations and public utilities operating in this state with which they are affiliated.

(END)

D-Note

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3983/lins
ARG:.....

INSERT ANAL-A:

(no P) OCR has general oversight authority with regard to public safety at railroad highway crossings. The Department of Transportation (DOT), a local authority, or a railroad may petition OCR with regard to a public safety concern related to a railroad highway crossing. Upon petition, OCR must investigate, must usually hold a public hearing, and may make determinations and issue orders to promote public safety, including ordering installation of signals or other safety devices at the crossing, alteration of the crossing or the approaches to the crossing or the mode of crossing, relocation of the crossing, closing of the crossing (with or without the reopening of a substitute crossing), relocation of the highway, construction of a bridge, and other reasonable modifications. OCR must apportion the expense of the work required by the order, which may be borne by railroads, local authorities, or DOT, or a combination. All orders of OCR are subject to judicial review.

INSERT ANAL-B:

(no P) The bill also allows DOT to bypass OCR review with regard to public safety concerns at railroad highway crossings. DOT may, on its own motion, provide notice to OCR and interested parties and proceed to investigate and determine matters of public safety at any railroad highway crossing in the same manner that OCR would. If DOT provides such notice to OCR, OCR is divested of any authority to consider the matter and any determination by DOT on the matter is not subject to review by OCR and is not subject to judicial review.

INSERT 4-19:

~~SECTION 1~~ 84.05 (title) of the statutes is amended to read:

~~84.05~~ (title) **Railroad crossing improvements crossings.**

History: 1977 c. 29 s. 1654 (8) (b) (2) (4); 1981 c. 347 s. 80 (2); 1985 a. 187; 1993 a. 16, 123.

~~SECTION 2~~ 84.05 of the statutes is renumbered 84.05 (2) and amended to read:

84.05 (2) On a highway which the department has authority to construct and which crosses a railroad, if the department determines that the construction or reconstruction of a grade separation or the rearrangement or elimination of a grade crossing or other rearrangement of the highway or tracks is necessary in the interest of public safety or for convenience of public travel, the department shall make a plan of the construction proposed and an estimate of the cost thereof, including the cost

of needed right-of-way; and shall endeavor to make an arrangement with all persons concerned as to all matters involved in the plan, including the portion of the cost of the contemplated work which the persons shall defray. If the department is unable to contract with the persons concerned as to the distribution and payment of the cost of the work or the maintenance thereof, the department ~~shall lay the matter before~~ may petition the office of the ~~commissioner of railroads~~, and the office of the ~~commissioner of railroads~~ shall review the proceedings and hold a hearing thereon in accordance with ss. 195.28 and 195.29, and shall fix the portion of the cost of the construction and of the maintenance which is to be paid by the persons or corporations concerned, and the portion of the cost, if any, to be paid by the public, which portion shall be paid from the transportation fund. The office ~~of the commissioner of railroads~~ shall determine the benefits, if any, which will inure to other highways, and apportion and charge to the units of government responsible for the construction of such other highways a fair portion of the cost.

History: 1977 c. 29 s. 1654 (8) (b) ~~(1) (4)~~; 1981 c. 347 s. 80 (2); 1985 a. 187; 1993 a. 16, 123.

~~SECTION 31~~ 84.05 (1) and (3) of the statutes are created to read:

84.05 (1) In this section, "office" means the office of the commissioner of railroads.

~~84.05~~ (3) Whenever the department may petition, or file a complaint with, the office under sub. (2) or s. 86.13 (3), 195.28, 195.285, or 195.29, the department may, on its own motion and in lieu of such a petition or complaint, provide notice to the office and the parties in interest and proceed to investigate and determine the matter itself under this subsection. In proceeding under this subsection, the department shall have the same power and authority, and proceed in the same manner, specified for the office under sub. (2) and ss. 86.13, 195.28, 195.285, and 195.29, including the

making of any determination and issuance of any order authorized for the office under sub. (2) and ss. 86.13, 195.28, 195.285, and 195.29. The department may proceed under this subsection regardless of any prior order of the office or any pending proceeding before the office, and, notwithstanding sub. (2) and ss. 86.13, 195.28, 195.285, and 195.29, notice from the department to the office under this subsection shall divest the office of authority over the matter specified in the notice. Notwithstanding sub. (2) and ss. 86.13, 195.28, 195.285, and 195.29, all decisions and orders of the department under this subsection are final and are not subject to review by the office or to judicial review under ch. 227.

SECTION ~~4~~ 86.13 (5) of the statutes is amended to read:

86.13 (5) Any railroad company that receives notice from the department under this section, or under s. 84.05 (3) with respect to a matter arising under this section, with respect to a state trunk highway may file a claim for reimbursement with the department. The department shall reimburse claimants for ~~85%~~ ^{85 percent} of the eligible costs incurred in the repair of a highway grade crossing. No claim for reimbursement may be paid by the department under this subsection unless the department approved the plans and estimated cost of the project prior to the start of the project. The department may inspect each completed project to verify the amount of the claim for reimbursement. The department shall create a procedure for establishing the priority for projects with respect to state trunk highways under this section for the purpose of programming reimbursements.

History: 1977 c. 29; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 137 s. 6; 1993 a. 16, 123, 490; 1999 a. 150 s. 672.

INSERT 6-2:

SECTION ~~5~~ 189.02 (4) of the statutes is amended to read:

189.02 (4) ~~Decisions~~ [✓] Subject to s. 84.05 (3), decisions of the office are not appealable to the ~~public service commission~~ [✓] department. Decisions of the office are subject to judicial review under ch. 227.

History: 1977 c. 29; 1979 c. 32 s. 92 (1); 1981 c. 347 ss. 22, 80 (1), (2); 1983 a. 27; 1985 a. 182 s. 57; 1993 a. 16, 123; 1999 a. 9.

INSERT 7-16:

~~SECTION 6.~~ [✓] 195.28 (2) to (4) of the statutes are amended to read:

195.28 (2) INSTALLATION COSTS. The cost of any signal or other crossing protection device which is ordered installed under sub. (1), or under s. 84.05 (3) with respect to a matter arising under sub. (1), and the cost of installing any such device shall be paid by the department from the appropriations under s. 20.395 (2) (gj), (gr) and (gx).

(3) MAINTENANCE COSTS. Except as otherwise provided in this subsection, the cost of maintaining crossing protection devices ordered under sub. (1), or under s. 84.05 (3) with respect to a matter arising under sub. (1), shall be the responsibility of the railroad or railroad historical society. Any railroad company or railroad historical society that incurs expenses for maintenance of signals or other safety devices may file a claim for reimbursement with the department regardless of the date of installation of the signals or devices. At the close of each fiscal year the department shall reimburse claimants under this subsection for ~~50%~~ ^{50 percent} of the costs, as determined by the office or, with respect to an order under s. 84.05 (3), as determined by the department, incurred for maintenance of railroad crossing protection devices from the appropriations under s. 20.395 (2) (gj) and (gq). If the amount in the appropriations under s. 20.395 (2) (gj) and (gq) is not adequate to fund maintenance reimbursement under this subsection, the amount shall be prorated in the manner determined by the office.

X

(4) PREVIOUS OFFICE ORDERS. Subsection (3) applies to maintenance costs for all crossing protection devices regardless of any prior order of the office or of the department under s. 84.05 (3) apportioning maintenance costs.

History: 1973 c. 155; 1973 c. 243 s. 82; 1975 c. 135; 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1979 c. 34; 1981 c. 20 ss. 1504, 2202 (51) (c); 1981 c. 347 s. 80 (1); 1985 a. 29 s. 3202 (51); 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16, 123; 1997 a. 135.

~~SECTION 7~~ 195.285 (2) and (3) of the statutes are amended to read:

195.285 (2) Signs placed upon the order of the office under this section, or of the department under s. 84.05 (3) with respect to a matter arising under this section, shall exempt vehicles from stopping as required under s. 346.45, unless a train or engine is occupying or approaching the crossing.

(3) The department shall establish standards for the type of signs, signals, markings or other devices for exempting vehicles from stopping as required under s. 346.45 and their location in relation to the highway and railroad track. The Except with respect to a sign placed upon order of the department under s. 84.05 (3), the office may upon petition or its own motion, with or without a hearing, order the removal of a sign exempting vehicles from stopping at a crossing.

History: 1975 c. 63; 1977 c. 29 ss. 1654 (8) (a), (9) (f), 1656 (43); 1981 c. 347 s. 80 (1), (2); 1985 a. 29; 1993 a. 16, 123.

~~SECTION 8~~ 195.286 (2) and (5) of the statutes are amended to read:

195.286 (2) SIGNS DESCRIBED. Such signs shall be round and of a size, color and message as specified by the department and, except with respect to a sign subject to the department's authority under s. 84.05 (3), approved by the office. Any change in these signs shall not be retroactive.

(5) OTHER SIGNS PROHIBITED. No other sign of the general size or appearance of the signs provided for in this section shall be placed or permitted upon any highway, nor any sign between such advance signs except signs or signals now required by law

or, except with respect to signs subject to the department's authority under s. 84.05 ✓

(3), permitted by the office for protection at railway crossings.

History: 1977 c. 29 ss. 1301, 1654 (8), (9) (e); 1977 c. 272; Stats. 1977 s. 195.286; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254.

SECTION 9. 195.29 (6) of the statutes is amended to read:

195.29 (6) VIEW AT CROSSINGS; TREES AND BRUSH NEAR CROSSINGS; FORFEITURE.

Every railroad shall keep its right-of-way clear of brush or trees for a distance of not less than 330 feet in each direction from the center of its intersection at grade with any public highway, and for such further distance as is necessary to provide an adequate view of approaching trains, from the highway. Every municipality shall keep the public highways within its jurisdiction clear of brush and shall adequately trim all trees within 330 feet of the center of any railroad highway grade crossing.

Every person or corporation owning or occupying any land adjacent to any railroad highway grade crossing shall keep all brush cut and adequately trim all trees on the land within the triangles bounded on 2 sides by the railway and the highway, and on the 3rd side by a line connecting points on the center lines of the railway and the highway, 330 feet from the intersection of the center lines. The office, upon its own motion, or upon any complaint to the effect that any work required by this subsection has not been performed, after due notice and hearing, may order the corporation, municipality or person at fault to perform the work; provided, however, that if the physical conditions at any crossing are such that the performance of the required work will not materially improve the view for highway traffic, or, if unreasonable loss would be caused thereby, the office may excuse the party in interest from performing the same. The office may also order the cutting of brush and the trimming of trees at private farm crossings as may be necessary and reasonable. If any person shall violate any provision of this section, or shall fail, neglect or refuse to obey any order

made by the office under this section or by the department under s. 84.05 (3) with
respect to a matter arising under this section, or any judgment or decree made by any
court upon such an order, for every such violation, failure or refusal such person shall
forfeit not less than \$25 nor more than \$150.

History: 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2003 a. 33.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3983/1dn

ARG: 

Date

ATTN: Joel Kleefisch

The attached redraft takes the approach we discussed. Instead of providing for ultimate review by DOT of every OCR decision, the bill creates an exception to the usual process so that DOT, on its own initiative and on a case-by-case basis, may bypass the OCR process and directly make the final determination on matters related to selected railroad crossings. I have maintained that part of the prior draft providing that DOT's determination in such matters is not subject to judicial review. Please advise if this is not consistent with your intent.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3983/1dn
ARG:kjf:pg

February 4, 2004

ATTN: Joel Kleefisch

The attached redraft takes the approach we discussed. Instead of providing for ultimate review by DOT of every OCR decision, the bill creates an exception to the usual process so that DOT, on its own initiative and on a case-by-case basis, may bypass the OCR process and directly make the final determination on matters related to selected railroad crossings. I have maintained that part of the prior draft providing that DOT's determination in such matters is not subject to judicial review. Please advise if this is not consistent with your intent.

Aaron R. Gary
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State of Wisconsin
2003-2004 LEGISLATURE

CORRECTIONS IN:

2003 ASSEMBLY BILL 837

Prepared by the Legislative Reference Bureau
(February 18, 2004)

1. Page 13, line 2: delete "185 percent" and substitute "1.85 percent".

(END)

LRB-3983/1
ARG

CCC to
2003 AB 837

#. Page 13, line 2:
delete "185 percent" and
substitute "1.85 percent".

RJF